

The respondent requests review of this Order and asserts three arguments. First, that the ALJ erred in granting claimant ttd benefits as there are no work restrictions currently in effect. Second, respondent maintains claimant is not entitled to ttd after

refusing to submit to medical treatment. And third, claimant is not entitled to a change in treating physician when the claimant has made no effort to attend authorized medical treatment.¹

Claimant argues the preliminary hearing Order should be affirmed in all respects.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

Claimant was injured in an accident that, for preliminary hearing purposes, has been determined to be compensable. At an earlier preliminary hearing the ALJ issued an Order directing respondent to provide ttd benefits and to provide a list of 3 physicians from which claimant could select one to direct his care. Following that hearing, claimant's counsel understood that respondent's counsel would be providing a list of physicians in the Guthrie, Oklahoma, area. Instead, the list contained the names of 3 physicians in the Wichita area.

Claimant has not selected from the list provided by respondent. Nor has he had treatment from any physician since shortly after his accident. He continues to remain in Guthrie, Oklahoma, and has not worked since the accident.

Respondent operates a trucking company that is located in Sabetha, Kansas. Claimant's accident took place in Mississippi. After his accident claimant returned to his home in Guthrie, Oklahoma as he believed he could not continue working as a truck driver after his accident and respondent did not extend an offer of any accommodated employment. On June 20, 2006, a written offer of accommodated employment was tendered to claimant.

On July 11, 2006 a second preliminary hearing was held. Claimant requested a list of 3 physicians to be identified from the Guthrie, Oklahoma area. Respondent maintained that claimant is not entitled to medical treatment in Oklahoma but rather, should go in the Wichita area. And respondent further argues that claimant's failure to obtain treatment with one of the previously identified physicians warrants a suspension of both his right to medical treatment and ttd benefits.

Before the merits of respondent's arguments can be considered, the Board must first decide whether it has jurisdiction in this matter. K.S.A. 44-534a restricts the jurisdiction of the Board to consider appeals from preliminary hearing orders to the following issues:

¹ Respondent's Brief at 1 (filed Aug. 11, 2006).

- (1) Whether the employee suffered an accidental injury;
- (2) Whether the injury arose out of and in the course of the employee's employment;
- (3) Whether notice is given or claim timely made;
- (4) Whether certain defenses apply.

These issues are considered jurisdictional and subject to review by the Board upon appeals from preliminary hearing orders. The Board can also review a preliminary hearing order entered by an ALJ if it is alleged the ALJ exceeded his or her jurisdiction in granting or denying the relief requested.² When the record reveals a lack of jurisdiction, the Board's authority extends no further than to dismiss the action.³ Accordingly, respondent and carrier's appeal is dismissed.

In this instance, the compensability of claimant's claim is not in dispute. Rather, respondent contests the ALJ's preliminary hearing award of ongoing ttd benefits and the ALJ's decision to grant claimant's request that his treatment be provided in Oklahoma rather than in Kansas. Under the statutes referenced above, neither of these issues is jurisdictional. The ALJ has the authority to determine a claimant's eligibility for ttd benefits. In this instance, the ALJ elected to continue the weekly payments after hearing the claimant's testimony. He also has the authority to order respondent to provide medical treatment in Oklahoma, where the claimant resides. Absent a showing that the ALJ exceeded his authority in some fashion, an allegation that is not made nor demonstrated by this record, the Board does not have the jurisdiction to set those determinations aside.

Similarly, the Board has no jurisdiction over the ALJ's denial of respondent's request to terminate claimant's benefits for an alleged failure to cooperate with his medical care. That is not an issue that falls within any of the criteria set forth in K.S.A. 44-534a.⁴

Thus, the respondent's appeal is dismissed for lack of jurisdiction.

WHEREFORE, it is the finding, decision and order of the Board that the respondent's appeal of the preliminary hearing Order of Administrative Law Judge John D. Clark dated July 12, 2006, is dismissed.

² See K.S.A. 44-551.

³ See *State v. Rios*, 19 Kan. App. 2d 350, Syl. ¶ 1, 869 P.2d 755 (1994).

⁴ See *Kent v. Schmidlein Electric, Inc.*, No. 163,248, 1998 WL 304254 (Kan. WCAB May 18, 1998).

IT IS SO ORDERED.

Dated this _____ day of August, 2006.

BOARD MEMBER

c: James B. Zongker, Attorney for Claimant
John R. Emerson, Attorney for Respondent and its Insurance Carrier